



June 27, 2000

Ms. Elizabeth Elam  
Taylor, Olson, Adkins, Sralla & Elam  
500 Throckmorton Street  
3400 Bank One Tower  
Fort Worth, Texas 76102-3821

OR2000-2457

Dear Ms. Elam:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 136491.

The City of Mansfield (the "city"), which you represent, received a request for four categories of information related to the city's administrative investigation of election and voting procedures.<sup>1</sup> You state that you have released the information requested in category one and claim that the documents requested in categories two through four do not exist. In the alternative, you claim that if the notes requested in category two exist, they are excepted from disclosure under section 552.107 of the Government Code. We have considered your assertions and the exception you claim. The requestor has also submitted comments to this office, which we have considered as well.

The Public Information Act (the "Act") does not require a governmental body to make available information which does not exist. Open Records Decision No. 362 (1983). The Act applies only to information in existence and does not require a governmental body to prepare new information. Open Records Decision Nos. 605 (1992), 572 (1990), 558 (1990),

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<sup>1</sup>Specifically, the requestor seeks:

1. The brief and exhibits submitted by Mr. Corbin, Esquire.
2. The material City Counsel [member] Taylor reviewed on [the] summary of Alice Church findings and Betsy Elam's notes.
3. An itemized statement of services rendered by Bill Lane, Esquire, regarding the Election investigation.
4. Any reports, notes or other documents prepared or submitted by Bill Lane, Esquire.

does not have the information sought in categories two through four of the request.<sup>2</sup> Therefore, the city need not create any new documents to respond to the request.

You also argue that if the notes requested in category two do exist and are located, the city “believes and asserts that information contained in those notes would likely relate to a legal opinion[,]” and as such would be excepted from disclosure pursuant to section 552.107. This office cannot rule on information not before us; therefore, if the requested information is located, you may not, based solely on the arguments before us, withhold it under section 552.107. Further, we note, if the requested notes exist and are found, because you did not submit to this office the information requested, or a representative sample thereof, within 15 business days of receiving the request, the notes are presumed to be public. Gov’t Code §§ 552.301(e), .302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.–Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov’t Code § 552.302); Open Records Decision No. 319 (1982). As such, should you locate the responsive information, or if you have located it already, you may not withhold it from the requestor without obtaining from this office a determination that the specific information is confidential. *See* Open Records Decision No. 319 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

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<sup>2</sup>The city claims that Mr. Bill Lane, Esq., is not in the practice of and did not create an itemized statement detailing over \$13,000 worth of legal services. If, in fact, the city subsequently determines that Mr. Lane does possess such a statement, the information must be released to the requestor. *See* Gov’t Code §§ 552.301(e), .302; *see also* Gov’t Code §§ 552.022(a)(3) and (a)(5) (information relating to the expenditure of public or other funds or taxes by a governmental body is public information), .022(a)(16) (information that is in a bill for attorney’s fees that is not privileged under the attorney-client privilege is public information), .353 (failure to provide access to public information is a misdemeanor and constitutes official misconduct).

general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford".

Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/nc

Ref: ID# 136491

cc: Mr. Richard Littell  
2603 Woodbridge Trail  
Mansfield, Texas 76063  
(w/o enclosures)